

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JAMES EDWARD JONES,
Petitioner,

vs.

RANDEE REWERTS,
Respondent.

**2:22-CV-11854-TGB-KGA
ORDER DENYING MOTION
FOR CERTIFICATE OF
APPEALABILITY
(ECF NO. 14);
AND GRANTING LEAVE TO
PROCEED IN FORMA
PAUPERIS ON APPEAL
(ECF NO. 12)**

On March 28, 2023, the Court dismissed Petitioner James Edward Jones's petition for a writ of habeas corpus filed pursuant to 28 U.S.C. § 2254 because the petition was filed after the statute of limitations expired. ECF No. 9. The Court also denied issuance of a certificate of appealability, but granted Petitioner leave to appeal in forma pauperis. *Id.* at PageID.649–50. Before the Court is Petitioner's motion for a certificate of appealability. ECF No. 14. Petitioner asserts that because his petition survived initial screening and was served on Respondent, the case warrants further review by the U.S. Court of Appeals for the Sixth Circuit.

To obtain a certificate of appealability, a habeas petitioner must make a substantial showing of the denial of a constitutional right. 28 U.S.C. § 2253(c)(2). When a district court denies a habeas petition, a

certificate of appealability may issue, and an appeal of the district court's order may be taken, only if the petitioner shows that "reasonable jurists would find the district court's assessment of constitutional claims debatable or wrong." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

In the present case, for reasons stated in greater detail in the Court's Order dismissing the petition (ECF No. 9), Petitioner failed to comply with the statute of limitations and is not entitled to equitable tolling. The fact that the petition was not summarily dismissed prior to service does not indicate that there was any merit to the petition or that it was debatably filed on time.

Accordingly, the motion for a certificate of appealability (ECF No. 14) is **DENIED**. As the Court previously indicated, Petitioner is permitted to proceed in forma pauperis on appeal. Therefore, Petitioner's application for leave to proceed in forma paupers on appeal (ECF No. 12) is **GRANTED**.

IT IS SO ORDERED.

Dated: May 16, 2023

s/Terrence G. Berg

TERRENCE G. BERG

UNITED STATES DISTRICT JUDGE